

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RONALD E. HOPPER
Claimant

VS.

BEECH AIRCRAFT CORPORATION
Respondent

AND

SELF INSURED
Insurance Carrier

Docket No. 168,414

ORDER

ON the 21st day of December, 1993, the application of the respondent for review by the Workers Compensation Appeals Board of the Award of Administrative Law Judge Shannon S. Krysl dated October 21, 1993, came on for oral argument by telephone conference.

APPEARANCES

The claimant appeared by and through his attorney, Dale V. Slape, of Wichita, Kansas. The respondent and its insurance carrier appeared by and through their attorney, David S. Wooding, of Wichita, Kansas. There were no other appearances.

RECORD

The Appeals Board adopts and considers for purpose of this appeal the same record as that considered by the Administrative Law Judge listed in her Award of October 21, 1993.

STIPULATIONS

The Appeals Board adopts those stipulations listed in the Administrative Law Judge's Award of October 21, 1993.

ISSUES

After stipulations were taken, the nature and extent of claimant's disability was the only issue left for decision by the Administrative Law Judge and the only issue presented in this appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) Claimant's is entitled to an award based on nine percent (9%) functional impairment to the body as a whole.

Claimant pulled his shoulder while moving his tool box on July 17, 1992. From that injury claimant developed winging scapula with weakness in the abduction of the arm secondary to long thoracic nerve dysfunction. The only functional impairment rating was that given by Dr. Eyster indicating claimant had a fifteen percent (15%) permanent impairment of function in his right upper extremity which he converted to nine percent (9%) to the body as a whole.

After being off work for approximately six days, claimant returned to his previous position where he remains earning a wage comparable to that earned prior to his injury. Claimant does electrical wiring and testing on twin aircraft. He is fourth in seniority in his department out of 81 employees. The evidence indicates it is improbable that he would be laid off, given his 26 years seniority. In fact, the evidence indicates that he would not likely be laid off unless Beech Aircraft closed its operation.

Pursuant to K.S.A. 1992 Supp. 44-510e, there is a presumption that the employee has no work disability if after the accident employee engages in work for wages comparable to the average gross wage he was earning at the time of the injury. Our Appellate Court has indicated in Locks v. Boeing Company, No. 68,386 (designated for publication 11-9-93) that the presumption of work disability is a rebuttable presumption. The Appeals Board finds, however, that under the facts and circumstances in this case, the presumption has not been overcome. The evidence indicates claimant has returned to the same position at the same wage and it is unlikely, after 25.5 years with that same employer, that he will experience any loss in access to the open labor market or ability to earn a comparable wage. Where claimant has not established a work disability, the award is to be based upon functional impairment. See K.S.A. 1992 Supp. 44-510e.

Dr. Eyster gave a rating of fifteen percent (15%) of the arm and nine percent (9%) of the body as a whole. The evidence does indicate the claimant's injury should be treated as one to the body as a whole. The shoulder joint is affected and accordingly must be rated at the next higher level which, in this case, would be the body as a whole. For that reason the Appeals Board adopts the finding that claimant has suffered a nine percent (9%) impairment of function to the body as a whole.

AWARD

WHEREFORE, the decision of the Administrative Law Judge is modified and an award of compensation is hereby made in accordance with the above finding in favor of the claimant, Ronald E. Hopper, and against the respondent, Beech Aircraft, and the insurance carrier, Beech Aircraft, for an accidental injury sustained on July 17, 1992.

Claimant's average weekly wage is stipulated to be \$585.20. He is entitled to 415 weeks at \$35.11 per week for a nine percent (9%) general body disability, making a total award of \$14,570.65.

As of February 3, 1994 there would be due and owing to the claimant 81 weeks permanent partial disability compensation at \$35.11 per week in the sum \$2,843.91 which is ordered paid in one lump sum less amount previously paid. Thereafter, the remaining balance in the amount of \$11,726.74 shall be paid at \$35.11 per week for 334 weeks or until further order of the Director.

The claimant is entitled to unauthorized medical up to the statutory maximum.

Future medical benefits will be awarded only upon proper application to and approval by the Director of the Division of Workers Compensation.

The claimant's attorney fees are approved subject to the provisions of K.S.A. 44-536.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed against the respondent to be paid direct as follows:

IRELAND COURT REPORTING

Transcript of Regular Hearing by Deposition, Dated February 8, 1993	\$ 148.67
Deposition of Robert L. Eyster, M.D., Dated February 17, 1993	\$ 117.45
Deposition of Jerry D. Hardin, Dated February 17, 1993	\$ 217.45
TOTAL	\$ 483.57

BARBER & ASSOCIATES

Deposition of Larry Oakley, Dated May 7, 1993	\$ 69.00
Deposition of Patricia Perdaris, Dated May 7, 1993	\$ 135.50
TOTAL	\$ 204.50

IT IS SO ORDERED.

Dated this _____ day of February, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Dale V. Slape, 1356 North Emporia, Wichita, Kansas 67214
David S. Wooding, 220 West Douglas, 300 Page Court, Wichita, Kansas 67202
Shannon S. Krysl, Administrative Law Judge
George Gomez, Director